Welcome to a joint webinar from IAFN’s SAFEta Project and VRLC

IAFN requests that you e-mail the names of any non-registered attendees who may be sharing this webinar experience with you so we can track attendance. Please send additional attendee names to EDUCATION@ForensicNurses.ORG today.

Thank you in advance for your help and cooperation!

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Objectives

- Participants will be able to:
  - Identify three reasons privacy matters to SA survivors
  - Explain the difference between privilege and confidentiality
  - Identify three ways in which privilege/confidentiality may be breached
  - Analyze whether a minor may consent to services
  - List 3 emerging privacy issues
Why Is Victim Privacy Important?

Why Victim Privacy Matters

• Autonomy
• Safety
• Individual survivor/patient & community trust
• Limits victims’ options
• Federal & state laws require it
• Licensing / ethics rules
Confidentiality vs. Privilege

- Confidentiality: Ethical or legal obligation not to disclose information shared.

- Privilege – Rule of evidence that excludes the admissibility of certain information. Privilege applies to:
  - Testimony
  - Documents.
Privacy Poll

- My communications with survivors are covered by:
  - Confidentiality
  - Privilege
  - Neither confidentiality nor privilege
  - Both

What Privacy Concerns / Challenges Do You Encounter In Your Work?

Common Privacy Challenges & Considerations for SA Survivors Seeking Forensic Exams

- Waiver
- Entries in the record
- Mandatory reporting
- Minors’ consent & privacy rights
- Access to the evidence
- Record disclosures
Inadvertent Breaches of Privilege, Confidentiality and/or Victim Privacy

- Presence of 3rd party not covered by confidentiality/privilege
- Victim re-disclosing (waiver)
- Information outside the scope of a statutory mandate
- Overbroad / improper subpoena response

Presence of a 3rd Party

- May - or may - not waive confidentiality or privilege
- Common exceptions:
  - “Necessary for the communication”
  - Authorized support person
  - Privileged relationship → Privileged relationship

Waiver

- Waiver laws = jurisdiction-specific
- Intentional vs Inadvertent
- May depend on scope
- Important to address!
Mandatory Reporting Laws: To Whom Do They Apply?

- Children
- Vulnerable adults
- Danger to self or others
- Certain victims or kinds of injuries
- STIs &/or other “reportable diseases”

Varies by jurisdiction!

Mandatory Reporting Poll

Mark every category of individuals for whom you are mandated to report abuse:

- Children
- Elder/older adult
- Adult w/ disability
- Danger to self or others
- Implement used to inflict injury (e.g., gun, knife)
- Competent adult SA and/or DV survivor
- STIs &/or other “reportable diseases”
- I’m not sure

Elder Abuse Reporting Poll

- In my jurisdiction, the elder abuse reporting law applies to someone this age (or older):
  - 55 years
  - 60 years
  - 65 years
  - N/A (no mandate to report elder abuse)
  - I am not sure
Navigating the Maze May Be Difficult…

When Sexual Intercourse* with a Minor Must Be Reported as Child Abuse: California Law

| Age of Victim | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 and older |
| M | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |
| F | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X | X |

Perspectives Vary . . .

If a Report is Required, How Much Must be Disclosed?

Know your statute! Information required may include:

- Victim’s name, address, location, phone #
- Why abuse or neglect is suspected
- Name of reporter
- Name of caretaker
- Any/all known facts….or only some!
Mandatory Reporting for OVW-funded Victim Service Providers (VSP)

Are you a "mandatory reporter"?

1. Review your statute to determine who must report abuse in your jurisdiction.
2. Pay attention to the particular requirements. Be sure to inform the victim at the outset—before the victim makes any disclosures—if you are a mandatory reporter.

Has the victim experienced "abuse" (or injury) as defined by statute?

1. Is the victim someone whose abuse must be reported?
2. Is the victim a minor under the law?
3. If the victim has a disability, does the disability subject the victim to mandatory reporting requirements in your jurisdiction?
4. Is the victim an "older adult" under the statute?

Note: In all but two states, the age of majority is 18.

Is a report required based on how the injury occurred?

1. Report Must Be Made
   - Make the report to the appropriate agency.
   - If there is a choice between agencies, discuss the options with the victim.
   - Ensure you are reporting only what is required, and that you are complying with VAWA or other funders' confidentiality requirements.

Are you exempt from reporting in this case?

1. For example, is the disclosure protected by a victim-advocate, therapist-patient, attorney-client, or other privilege that prohibits disclosure without victim consent?
2. Do not breach a victim's confidentiality without a victim's written and informed consent.

For more information, contact the VRLC at 503.274.5477 or TA@victimrights.org.

Visit us on the web at www.victimrights.org

Poll

In your jurisdiction, would you have to report JoAnn’s assault to law enforcement?

• Yes (if yes, use the chat box to explain why)
• No (if no, use the chat box to explain why not)
• Not sure
Is the Communication Still Privileged If ...?

Question: Are patient-health care provider communications protected from disclosure after the victim’s death?

– Florida: Yes
– Alaska: Yes, unless...
– New Hampshire: Statute is silent
– Oregon: Yes for doctor; silent for nurses

Jurisdiction-Specific Privacy Cards!

FAQ cards for every state and territory. (Spanish translations available soon.)

“What mandatory reporting laws should I be aware of in my jurisdiction?”
“Are communications between a victim and a prosecutor’s office confidential?”
“When must school employees report to the school’s Title IX coordinator?”
“May a victim counselor be present during a victim’s privileged communications without waiving confidentiality?”

HIPAA’s LE Exceptions
HIPAA Exceptions:
Permitted Disclosures

- Compliance w/ court order/Subpoena issued by a judge
- Response to Administrative request
- Identification or location of suspect, fugitive, witness, or missing person & waiting will have adverse consequence
- Mandatory reporting laws
- Suspicious death
- Prevent serious or imminent harm
- Identify or apprehend escapee
- Re: Minors – punts to the states
- See 45 CFR 164.512

Subpoenas

"Public Hospital Corrects Improper Disclosure of PHI In Response to A Subpoena"

A public hospital, in response to a subpoena (not accompanied by a court order), impermissibly disclosed the protected health information (PHI) of one of its patients. Contrary to the Privacy Rule protections for information sought for administrative or judicial proceedings, the hospital failed to determine that reasonable efforts had been made to assure that the individual whose PHI was being sought received notice of the request and/or failed to receive satisfactory assurance that the party seeking the information made reasonable efforts to secure a qualified protective order. Among other corrective actions to remedy this situation, OCR required that the hospital revise its subpoena processing procedures. Under the revised process, if a subpoena is received that does not meet the requirements of the Privacy Rule, the information is not disclosed; instead, the hospital contacts the party seeking the subpoena and the requirements of the Privacy Rule are explained. The hospital also trained relevant staff members on the new procedures.

Subpoenas

- Who issued it?
- What was requested?
- What does the law require?
- What are the next steps?
Minors

What Challenges do You Face in Serving Minors?

SERVING MINORS: Some Common Questions & Concerns

- If a minor seeks a forensic exam, do I have to get parental consent? Notify the parents?
- What if the minor is refusing the exam?
- What if a parent asks for information?
- Who may sign a release of information?
Analysis

1. Is this client a "minor" under state law?
2. Is there a statute re: minor consent for this specific service?
3. Are there any relevant court cases?
4. Has a state licensing board or other agency issued guidance?
5. Are there any ethical guidelines?

Legally, Who Is a Minor?

- Depends on the purpose - laws differ!
- For health care purposes, minor = < 18 in almost every state
- Minors still have rights...albeit diminished ones

When Might the Law Not View a Minor as a Minor?

- Homeless, self-sufficient or living apart
- In the military
- Emancipated
- Married
- A parent
To What Services May Minors Consent?

DEPENDS ON THE JURISDICTION! MAY INCLUDE:
- Mental health counseling
- Drug and alcohol services
- Sexual assault exam; evidence collection; medical care
- SA-specific counseling
- HIV/STI/communicable disease testing
- Pregnancy-related services
- Emergency medical care
- Birth control / Family Planning

Emerging Privacy Issues

- Body worn cameras
- Crime mapping
- Mosaic use of data
- Open data Initiatives

“Police Officer Body Cameras Record Domestic Violence Response Calls”
The On-line World

This Website Says It Can Identify Any Photo

Jackie Linshi @jackielinshi
May 14, 2015

See artificial intelligence in action

Computing company Wolfram Research released Thursday a "milestone" website that it says will identify any photo—though of course, it won't...

The Open Data Initiative

Open Data Initiative: What Information May Be Released?

- Name of victim (and complainant)
- Victim's address
- Gender
- Where crime occurred
  - Address
  - Type of building
- Perpetrator's MO
- Summary of victim's injury

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The OVW TA Privacy Project Is Here To Help!

VRLC Oregon Office:
(503) 274-5477
TA@victimrights.org

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This event will be archived online on the SAFEta website! Go to: www.safeta.org

Remember if you have any questions to contact SAFEta at info@safeta.org or by calling 1-877-819-SART.